

1 William M. Delli Paoli, Esq. (C.S.B. No. 163759)

2 **PAOLI & PURDY, PC**

3 4340 Von Karman Avenue, Suite 100

4 Newport Beach, CA 92660-2085

5 949/752-7711 - Office 949/752-8339 - Facsimile

6 OCLawfirm@aol.com - email

7 OCLawyer@aol.com - email

8 Attorneys for Plaintiff, Nancy Vaughan

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 NANCY VAUGHAN,

13 Plaintiff,

14 vs.

15 DAILY HARVEST, INC., SECOND BITE
16 FOODS, INC., d/b/a STONE GATE
17 FOODS, SMIRK'S LTD., MOLINOS
18 ASOCIADOS SAC, and DOES 1 through
19 20, inclusive,

20 Defendants.

Civil Action No.: 8:23-cv-01651DOC-KES

**PLAINTIFF NANCY VAUGHAN'S
NOTICE OF DISMISSAL WITHOUT
PREJUDICE PURSUANT TO
FEDERAL RULES OF CIVIL
PROCEDURE, RULE 41(a)(2))**

Hon. David O. Carter, Judge of the
United States District Court
Filing Date: September 6, 2023
Trial Date: None Set

21 Pursuant to Fed. R. Civ. P., Rule 41(a)(2), Plaintiff, Nancy Vaughan, hereby requests
22 the Court Dismiss the entire action without prejudice as result of Plaintiff's agreement to
23 participate in settlement negotiations in an action filed in the United States District Court for
24 the Southern District of New York, without the necessity of Plaintiff filing an action before
25 that Court. It appears that two of the Defendants, Daily Harvest, Inc., Second Bite Foods,
26 Inc., d/b/a Stone Gate Foods, have agreed to tender their insurance policy limits and
27 Magistrate Judge Sarah L. Cave is continuing to engage Defendant, Smirk's Ltd., in
28 settlement negotiations in an effort to resolve the claims against sad Defendant.

Further, should Defendant, Smirk's Ltd., fail to resolve the claims against it along with the settling Defendants, Plaintiff shall file an action against the remaining Defendants, Smirk's Ltd., and Molinos Asociados SAC, with the United States District Court for the State of Colorado, which would then be the appropriate jurisdiction for such an action.

The actions filed in the United States District Court for the Southern District of New York are collectively entitled In re: Daily Harvest, Inc. Products Liability Litigation, Case numbers 11cv5987(DLC); 23cv1607(DLC); 23cv1617(DLC); 23cv1620(DLC); 23cv1627(DLC); 23cv1633(DLC); 23cv1640(DLC); 23cv1643(DLC); 23cv1648(DLC); 23cv1649(DLC); 23cv1651(DLC); 23cv1653(DLC); 23cv1658(DLC); 23cv1659(DLC); 23cv1660(DLC); 23cv1662(DLC); 23cv1663(DLC); 23cv1664(DLC); 23cv1666(DLC); 23cv1668(DLC); 23cv1672(DLC); 23cv1673(DLC); 23cv1681(DLC); 23cv1683(DLC); 23cv1686(DLC); 23cv1688(DLC); 23cv1692(DLC); 23cv1694(DLC); 23cv1703(DLC); 23cv1705(DLC); 23cv1709(DLC); 23cv1712(DLC); 23cv1713(DLC); 23cv1718(DLC); 23cv1721(DLC); 23cv1725(DLC); 23cv1727(DLC); 23cv1732(DLC); 23cv1734(DLC); 23cv1736(DLC); 23cv1737(DLC); 23cv1740(DLC); 23cv1741(DLC); 23cv1742(DLC); 23cv1743(DLC); 23cv1744(DLC); 23cv1745(DLC); 23cv1748(DLC); 23cv1750(DLC); 23cv2038(DLC); 23cv2466(DLC); 23cv2607(DLC).

It is my further understanding that, in addition to the listed cases numbered herein, there are numerous additional "potential" claimants who have likewise opted to participate in the settlement process being conducted by Magistrate Judge Sarah L. Cave.

DATED: October 2, 2023

PAOLI & PURDY, PC

By: 

WILLIAM M. DELLI PAOLI
Attorneys for Plaintiff,
NANCY VAUGHAN

TO: All counsel of record via ECF and email

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 4340 Von Karman Avenue, Suite 100, Newport Beach, California 92660-2085.

On October 3, 2023, I served the foregoing document described as **PLAINTIFF NANCY VAUGHAN'S NOTICE OF DISMISSAL WITHOUT PREJUDICE PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 41(a)(2)**, on all parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Please see attached service list

☐ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on the same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the offices of the addressees.

☐ **BY OVERNIGHT COURIER:** I caused the envelope, with delivery charges prepaid, to be sent by _____ as indicated on the attached Service List.


☐ **VIA FACSIMILE:** I forwarded a true and correct copy of the above-described documents to the parties named in the service list via the facsimile numbers listed herein.

☒ **VIA ELECTRONIC MAIL:** By causing the foregoing document to be served electronically by electronically mailing a true and correct copy through Paoli & Purdy's electronic mail system to the e-mail address(es), as stated in the attached service list, and the transmission was reported as complete and no error was reported.

Executed on October 3, 2023, at Newport Beach, California.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of member of the bar of this court at whose direction the service was made.


Lora Amundson

SERVICE LIST

Vaughan v. Daily Harvest, Inc. et al.
USDC- Southern Division - Case No: 8:23-cv-01651

**Attorneys for Defendant,
SMIRK'S LTD**

Joshua W. Praw (SBN 188304)
MURCHISON & CUMMING, LLP
801 S. Grand Ave., Ninth Floor
Los Angeles, California 90032

Telephone: (213) 623-7400
Facsimile: (213) 623-6336

Email: jpraw@murchisonlaw.com